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SENATE BILL 362

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John T. L. Grubescic

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CONTROLLED SUBSTANCES; EXCLUDING RESIDENTIAL
PROPERTY FROM A DRUG-FREE SCHOOL ZONE IN THE CRIME OF
DISTRIBUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-22 NMSA 1978 (being Laws 1972,
Chapter 84, Section 22, as amended) is amended to read:

"30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
DISTRIBUTION PROHIBITED.--

A. Except as authorized by the Controlled
Substances Act, it is unlawful for a person to intentionally
distribute or possess with intent to distribute a controlled
substance or a controlled substance analog except a substance
enumerated in Schedule I or II that is a narcotic drug, a
controlled substance analog of a controlled substance

.163980.1

underscored material = new
[bracketed material] = delete

underscoring material = new
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1 enumerated in Schedule I or II that is a narcotic drug or
2 methamphetamine, its salts, isomers and salts of isomers. A
3 person who violates this subsection with respect to:

4 (1) marijuana is:

5 (a) for the first offense, guilty of a
6 fourth degree felony and shall be sentenced pursuant to the
7 provisions of Section 31-18-15 NMSA 1978;

8 (b) for the second and subsequent
9 offenses, guilty of a third degree felony and shall be
10 sentenced pursuant to the provisions of Section 31-18-15 NMSA
11 1978;

12 (c) for the first offense, if more than
13 one hundred pounds is possessed with intent to distribute or
14 distributed or both, guilty of a third degree felony and shall
15 be sentenced pursuant to the provisions of Section 31-18-15
16 NMSA 1978; and

17 (d) for the second and subsequent
18 offenses, if more than one hundred pounds is possessed with
19 intent to distribute or distributed or both, guilty of a second
20 degree felony and shall be sentenced pursuant to the provisions
21 of Section 31-18-15 NMSA 1978;

22 (2) any other controlled substance enumerated
23 in Schedule I, II, III or IV or a controlled substance analog
24 of a controlled substance enumerated in Schedule I, II, III or
25 IV except a substance enumerated in Schedule I or II that is a

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1 narcotic drug, a controlled substance analog of a controlled
2 substance enumerated in Schedule I or II that is a narcotic
3 drug or methamphetamine, its salts, isomers and salts of
4 isomers, is:

5 (a) for the first offense, guilty of a third
6 degree felony and shall be sentenced pursuant to the provisions
7 of Section 31-18-15 NMSA 1978; and

8 (b) for the second and subsequent offenses,
9 guilty of a second degree felony and shall be sentenced
10 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

11 (3) a controlled substance enumerated in
12 Schedule V or a controlled substance analog of a controlled
13 substance enumerated in Schedule V is guilty of a misdemeanor
14 and shall be punished by a fine of not less than one hundred
15 dollars (\$100) or more than five hundred dollars (\$500) or by
16 imprisonment for a definite term not less than one hundred
17 eighty days but less than one year, or both.

18 B. It is unlawful for a person to distribute gamma
19 hydroxybutyric acid or flunitrazepam to another person without
20 that person's knowledge and with intent to commit a crime
21 against that person, including criminal sexual penetration.
22 For the purposes of this subsection, "without that person's
23 knowledge" means the person is unaware that a substance with
24 the ability to alter that person's ability to appraise conduct
25 or to decline participation in or communicate unwillingness to

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[bracketed material] = delete

1 participate in conduct is being distributed to that person.

2 Any person who violates this subsection is:

3 (1) for the first offense, guilty of a third
4 degree felony and shall be sentenced pursuant to the provisions
5 of Section 31-18-15 NMSA 1978; and

6 (2) for the second and subsequent offenses,
7 guilty of a second degree felony and shall be sentenced
8 pursuant to the provisions of Section 31-18-15 NMSA 1978.

9 C. Except as authorized by the Controlled Substances
10 Act, it is unlawful for a person to intentionally create or
11 deliver, or possess with intent to deliver, a counterfeit
12 substance. A person who violates this subsection with respect
13 to:

14 (1) a counterfeit substance enumerated in
15 Schedule I, II, III or IV is guilty of a fourth degree felony
16 and shall be sentenced pursuant to the provisions of Section
17 31-18-15 NMSA 1978; and

18 (2) a counterfeit substance enumerated in
19 Schedule V is guilty of a petty misdemeanor and shall be
20 punished by a fine of not more than one hundred dollars (\$100)
21 or by imprisonment for a definite term not to exceed six
22 months, or both.

23 D. A person who knowingly violates Subsection A or C
24 of this section while within a drug-free school zone, excluding
25 private property that is residentially zoned or used primarily

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1 as a residence, with respect to:

2 (1) marijuana is:

3 (a) for the first offense, guilty of a third
4 degree felony and shall be sentenced pursuant to the provisions
5 of Section 31-18-15 NMSA 1978;

6 (b) for the second and subsequent offenses,
7 guilty of a second degree felony and shall be sentenced
8 pursuant to the provisions of Section 31-18-15 NMSA 1978;

9 (c) for the first offense, if more than one
10 hundred pounds is possessed with intent to distribute or
11 distributed or both, guilty of a second degree felony and shall
12 be sentenced pursuant to the provisions of Section 31-18-15
13 NMSA 1978; and

14 (d) for the second and subsequent offenses,
15 if more than one hundred pounds is possessed with intent to
16 distribute or distributed or both, guilty of a first degree
17 felony and shall be sentenced pursuant to the provisions of
18 Section 31-18-15 NMSA 1978;

19 (2) any other controlled substance enumerated in
20 Schedule I, II, III or IV or a controlled substance analog of a
21 controlled substance enumerated in Schedule I, II, III or IV
22 except a substance enumerated in Schedule I or II that is a
23 narcotic drug, a controlled substance analog of a controlled
24 substance enumerated in Schedule I or II that is a narcotic
25 drug or methamphetamine, its salts, isomers and salts of

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1 isomers, is:

2 (a) for the first offense, guilty of a
3 second degree felony and shall be sentenced pursuant to the
4 provisions of Section 31-18-15 NMSA 1978; and

5 (b) for the second and subsequent offenses,
6 guilty of a first degree felony and shall be sentenced pursuant
7 to the provisions of Section 31-18-15 NMSA 1978;

8 (3) a controlled substance enumerated in
9 Schedule V or a controlled substance analog of a controlled
10 substance enumerated in Schedule V is guilty of a fourth degree
11 felony and shall be sentenced pursuant to the provisions of
12 Section 31-18-15 NMSA 1978; and

13 (4) the intentional creation, delivery or
14 possession with the intent to deliver:

15 (a) a counterfeit substance enumerated in
16 Schedule I, II, III or IV is guilty of a third degree felony
17 and shall be sentenced pursuant to the provisions of Section
18 31-18-15 NMSA 1978; and

19 (b) a counterfeit substance enumerated in
20 Schedule V is guilty of a misdemeanor and shall be punished by
21 a fine of not less than one hundred dollars (\$100) nor more
22 than five hundred dollars (\$500) or by imprisonment for a
23 definite term not less than one hundred eighty days but less
24 than one year, or both.

25 E. Notwithstanding the provisions of Subsection A of
.163980.1

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1 this section, distribution of a small amount of marijuana for
2 no remuneration shall be treated as provided in Paragraph (1)
3 of Subsection B of Section 30-31-23 NMSA 1978."

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